Remarks

1. Claim 4 has been amended to overcome the rejection under 35 USC §112 by deletion of the phrase "wherein the only portion of said metatarsal guard which transmits the load to the sole is the single concave right support leg and the single concave left support leg".

2. The rejection of claims 4-6 under 35 USC 102(b) as being anticipated by Fortin is traversed. The Fortin metatarsal guard requires relatively long slits 19 to be cut into the plastic sheet 11 to "facilitate flexion of the metatarsal guard and prevent this guard from impeding flexion of the foot of the wearer in a crouching posture" (col. 1, line 66 - col. 2, line 1). The slit 19 forms two legs in Fortin. That is in contrast to the present invention in which there is only a single leg, and no slits are required for facilitating flexion of the metatarsal guard or for improving flexion of the foot of the wearer in the crouching position. Nevertheless, the claims have been amended to still further distinguish Fortin by providing that the convex arch portion has a section immediately rearward of the support legs which, unlike Fortin, does not bear against the sole.

3. The rejection of claims 4-6 under 35 U.S.C. 102(b) as being anticipated by Krajcir (4908963) is traversed. The Krajcir metatarsal guard requires multiple right and left ribs (legs) 10, 11, 12 and 13 for increasing the flexibility of the guards. Those multiple ribs can not be considered to be the single right support and left support legs recited in the claims.

4. The rejection of claims 4-6 under 35 U.S.C. 103(a) as being unpatentable over Fortin is traversed. The basis of this rejection is the contention that it would have been obvious to remove the slits (19) from the shoe of Fortin to provide a stronger and stiffer shoe. Even, assuming arguendo, that such a modification of Fortin would have been obvious, which it would

not, such a modified guard would not include a convex arch portion having a section immediately rearward of the support legs which does not bear against the sole.

Further, any such modification to remove the slits of Fortin would not have been obvious because it would destroy a desired feature of Fortin. More specifically, it was a specific object of Fortin to provide a metatarsal guard which would facilitate flexion of the guard and would prevent the guard from impeding flexion of the foot of the wearer in a crouching position. In order to achieve that flexibility, the slits of Fortin were provided. The proposed removal of these slits from the Fortin metatarsal guard would destroy the flexibility of the Fortin metatarsal guard. It is respectfully submitted that a modification which destroys a desired feature of a reference, such as proposed here, is not a proper modification.

Moreover, with respect to claim 5, neither Kracjir or Fortin disclose or suggest that the concave arch portion and concave right and left support members are solid members without any openings therein.

The relatively complex metatarsal guards of Kracjir and Fortin indicate that neither of these patentees recognized that a metatarsal guard of simple construction, such as the metatarsal guard of the instant invention, would meet the present industrial requirements for impact resistant safety shoes and at the same time because of its simple construction, provide increased flexibility to wearers of safety shoes incorporating the metatarsal guard. For all the foregoing reasons, it is respectfully submitted that neither Kracjir or Fortin anticipate the present invention

nor that Fortin, as modified, would render the present invention unpatentable.

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Respectfully submitted,

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VERSIONS WITH MARKINGS TO SHOW CHANGES MADE

Claim 4 has been amended as follows:

4. Footwear comprising a sole, a toe cap, and an upper having a unitary one piece molded metatarsal guard therein for transmitting a load to the sole, said metatarsal guard comprising a convex arch portion over the wearer's instep; a lip integrally molded with said arch portion and overlying the toe cap; and only a single concave right support leg and only a single concave left support leg overlying the sole, said support legs integrally molded with the convex arch portion and extending on opposite sides of the wearer's foot and bearing against the sole said convex arch portion having a section immediately rearward of the support legs which does not bear against the sole [and wherein the only portion of said metatarsal guard which transmits the load to the sole is the single concave right support leg and the single concave left support leg].